

Before the
Federal Communications Commission
Washington, DC 20554

EXCISE FILE COPY
ADDITIONAL
FCC 93-334

In the Matter of)
)
Implementation of Section 22) MM Docket No. 92-261
of the Cable Television)
Consumer Protection and)
Competition Act of 1992)
)
Equal Employment Opportunities)

REPORT AND ORDER

Adopted: June 24, 1993 ; Released: July 23, 1993

By the Commission: Commissioner Barrett issuing a statement.

TABLE OF CONTENTS

	Paragraph
I. INTRODUCTION.....	1
II. BACKGROUND.....	2-6
III. DISCUSSION.....	7-50
A. <u>Mid-term Review for Broadcast Television Stations</u>	7-17
B. <u>Cable Industry Equal Employment Opportunity</u>	18-49
1. Collection of Employee Data...	22-28
2. Definitions for Job Category..	29-36
3. Analysis of Employee Data.....	37-39
4. Multichannel Video Programming Distributors.....	40-47
5. Effective Date of New Provisions.....	48-49
C. <u>New Matters Raised by the Comments</u>	50
IV. CONCLUSION.....	51

DISPATCHED BY

JUL 26 3 26 PM '93

FCC MAIL SECTION

V. ADMINISTRATIVE MATTERS.....52-58

I. INTRODUCTION

1. On October 5, 1992, Congress enacted the Cable Television Consumer Protection and Competition Act of 1992.¹ By this Report and Order, we are amending our rules to implement the equal employment opportunity (EEO) provisions of the 1992 Cable Act.²

II. BACKGROUND

2. The Commission has imposed EEO standards on the broadcast and cable television industries since 1969 and 1972, respectively. Under our current EEO regulations,³ broadcast television stations⁴ and cable television operators, including satellite master antenna operators, may not discriminate in their employment practices due to gender, race, color, religion, or national origin.⁵ They also must afford equal opportunity in employment to all qualified persons.⁶ In addition, both broadcast television stations and cable operators must establish and maintain an equal employment opportunity program designed to provide equal opportunity for minorities and women in all aspects of their employment policies and practices. The EEO review processes for broadcast stations and cable operators are similar in that, in both cases, our primary focus is on the efforts made to recruit, hire and promote qualified minorities and women. However, the type of information relied upon in reviewing EEO

¹ Pub. L. No. 102-385, 106 Stat. 1460 (1992) (hereinafter "1992 Cable Act" or "Cable Act of 1992").

² See Appendix B for final rule changes.

³ See 47 C.F.R. §73.2080 (broadcast EEO Rule) and 47 C.F.R. §76.71, et. seq. (cable EEO rules). Our cable EEO regulations were implemented pursuant to Section 634 of the Cable Communications Policy Act of 1984, Pub. L. No. 98-549, Section 1 et. seq. 98 Stat. 2779 (1984). (hereinafter "1984 Cable Act" or "Cable Act of 1984"). See also Report and Order, in MM Docket No. 85-61, 102 FCC 2d 562 (1985).

⁴ These requirements apply to broadcast radio stations as well.

⁵ Under the 1984 Cable Act and our cable EEO rules, cable entities also may not discriminate based on age. See 47 U.S.C. §554(b); 47 C.F.R. §76.73(a).

⁶ Protected groups for both industries are: Women, Blacks, Hispanics, Asian/Pacific Islanders and American Indians.

programs and the frequency with which EEO reviews occur differ.

3. Broadcast television stations' EEO compliance is reviewed every five years during the license renewal process. Broadcast stations with five or more full-time employees are required to file an "Equal Employment Opportunity Program Report" (Form 396) with their renewal applications. This form requests recruitment, hiring and promotion data for the 12-month period prior to filing the renewal application. Licensees also must file an Annual Employment Report (Form 395-B) on a yearly basis.⁷ When reviewing a broadcaster's EEO compliance at renewal time,⁸ our primary focus is on the licensee's overall EEO efforts.⁹ If a broadcast station is found to be in compliance with our broadcast EEO Rule, renewal is granted. If, however, it is not in compliance, we may impose a variety of remedies or sanctions such as an admonition, reporting conditions, renewal for less than a full term and/or a forfeiture. If the facts so warrant, we will designate the renewal application for hearing to determine

⁷ See 47 C.F.R. §73.3612. These reports, which set forth the station's employment statistics by job categories, are reviewed when the station applies for renewal.

⁸ We also take cognizance of any final determinations reached concerning complaints of employment discrimination against broadcasters filed with government agencies and/or courts established to enforce nondiscrimination laws. See Memorandum of Understanding between Federal Communications Commission and the Equal Employment Opportunity Commission, 70 FCC 2d 2320 (1978) (agreement between the FCC and the EEOC regarding the handling of employment discrimination complaints against broadcasters).

⁹ This evaluation is a two-step process. Initially, we review the Form 396 information in the licensee's renewal application and compare the station's workforce, as reflected in the Form 395-B reports, with the available labor force. See Amendment of Part 73 of Commission's Rules Concerning Equal Employment Opportunity in the Broadcast Radio and Television Services, 2 FCC Rcd 3967 (1987) (Broadcast EEO), petition for reconsideration pending; see also 4 FCC Rcd 1715 (1989) (request for clarification of the National Association of Broadcasters). If this first step indicates that the station's EEO efforts are satisfactory, the station is accepted as having fulfilled its obligations. However, if the initial analysis indicates that a station's efforts may have been less than satisfactory, it is subjected to a second-step analysis of those areas where its efforts appear deficient.

whether renewal of license should be granted or denied.¹⁰

4. Cable systems and headquarters units with six or more full-time employees are evaluated on an annual basis.¹¹ This review begins when the cable operator files its Annual Employment Report (Form 395-A) which requires responses to nine questions about the cable operator's EEO efforts¹² as well as employment, hiring and promotion data. In addition, cable operators are required to answer questions from a Supplemental Investigation Sheet (SIS) every five years.¹³ This sheet requests additional information regarding recruitment efforts and job categories. The Form 395-A, along with any additional information, is reviewed using a two-step process which involves a statistical analysis of the cable system's workforce and a review of the system's responses to questions regarding its EEO program. In addition, we examine any final determinations reached by government agencies or the courts regarding EEO complaints filed against a cable system. If a system appears to be in compliance with our cable EEO rules, it is granted certification for that year. If we find that the system is not engaging in sufficient efforts or is not attracting a diverse pool of applicants, additional inquiries are made. If, based on the Form 395-A report and responses to subsequent inquiries, it is determined that the system is not in compliance, certification is denied. When certification is denied, we may impose various remedies or sanctions, including an admonition, reporting conditions; or, where appropriate, a forfeiture.¹⁴ Finally, in addition to the annual review and the five year investigation, we conduct selective on-site reviews of cable systems to verify their EEO programs and ensure that employees are properly classified.

5. Congress in the 1992 Cable Act found that minorities and females were not employed in significant numbers in managerial

¹⁰ See Broadcast EEO, supra; Beaumont Branch of the NAACP and the National Black Media Coalition v. FCC, 854 F.2d 501, 506 (D.C. Cir. 1988); Bilingual Bicultural Coalition on Mass Media, Inc. v. FCC, 595 F.2d 621 (D.C. Cir. 1978).

¹¹ See 47 C.F.R. §76.77.

¹² These questions emulate the major requirements of Section 634(d)(2) of the Communications Act and 47 C.F.R. §76.75. See Appendix D.

¹³ See 47 U.S.C. §554(e)(2); 47 C.F.R. §76.77.

¹⁴ See 47 U.S.C. §554(f)(2).

positions in the broadcast and cable television industries.¹⁵ It, therefore, adopted the EEO provisions within the 1992 Cable Act. The 1992 Cable Act adds a new section 334 to the Communications Act, which codifies our broadcast EEO Rule as well as the EEO reporting forms as they apply to broadcast television stations.¹⁶ In addition, the new Section 334 requires the Commission to conduct mid-term reviews of broadcast television station licensees' employment practices and to require the Commission to inform such licensees of necessary improvements in recruitment practices identified as a consequence of the review.¹⁷ The Cable Act of 1992 amends Section 634(d)(1)¹⁸ of the Communications Act which requires that the Commission, not later than 270 days after enactment of the 1992 Cable Act, and after notice and opportunity for hearing, "prescribe revisions in the rules under this section in order to implement the amendments made to this section by such Act."¹⁹ The Act also amends Section 634(d)(3) of the Communications Act to require the collection of more specific employee data for 15 cable job

¹⁵ See Section 22(a)(1) of the 1992 Cable Act. See also House Committee on Energy and Commerce, H.R. Rep. No. 102-628, 102d Cong., 2d Sess. at 111 (1992). (hereinafter "House Report").

¹⁶ See 47 U.S.C. §334(a). In its comments, the National Association for the Advancement of Colored People ("NAACP") suggests a number of significant changes to the forms 396, 395-B and our broadcast EEO Rule. See NAACP Comments, at 16-18, 30. The 1992 Cable Act explicitly prohibits revisions to these forms and the broadcast EEO Rule as they apply to broadcast television stations. See also House Committee on Energy and Commerce, H.R. Rep. No. 102-862, 102d Cong. 2d Sess. (1992) reprinted at Cong. Rec. H 8308, H 8333 (daily ed. September 14, 1992) (hereinafter "Conference Report"). Therefore, these suggested changes will not be made.

¹⁷ See 47 U.S.C. §334(b).

¹⁸ The 1992 Cable Act amends Section 634(f)(2) to raise the basic forfeiture for cable EEO violations from \$200 to \$500. See 47 U.S.C. §554(f)(2). Because our rules do not specify a forfeiture amount for cable EEO violations, (see 47 C.F.R. §1.80(b)) this amendment does not require a revision to our rules. NAACP suggests that, in light of Congress' intent that we increase the level of forfeitures, we should raise the base forfeiture for broadcast EEO violations from \$12,500 to \$32,500. See NAACP Comments, at 57. This proposal is beyond the scope of this rule making proceeding.

¹⁹ 47 U.S.C. §554(d)(1).

categories.²⁰ In addition, the 1992 Cable Act amends Section 634(h)(1) of the Communications Act to expand the scope of the cable EEO provisions to include multichannel video programming distributors.²¹

6. On December 10, 1992, the Commission adopted a Notice of Proposed Rule Making (Notice).²² In the Notice, the Commission proposed rule changes it believed appropriate to implement the EEO provisions of the 1992 Cable Act and sought comment from all interested parties on the proposed rules. Fourteen comments and eight reply comments were filed in response to the Notice.²³

III. DISCUSSION

A. Mid-term Review of Broadcast Television Stations.

7. Criteria. In the Notice, the Commission noted that the Act was silent as to the criteria to be used for the mid-term review. It, therefore, proposed to adopt the standard articulated in the Conference Report which indicated that the Commission should use a statistical comparison applying its processing criteria.²⁴

8. The National Association of Broadcasters ("NAB") supports this proposal.²⁵ However, NAACP and the Office of Communications of the United Church of Christ ("UCC") argue that this proposal ignores the explicit language of the Act and our longstanding EEO efforts-oriented policy.²⁶ The Act states that the Commission must review the employment practices of broadcast television stations.²⁷ UCC argues that the Conference Committee did not intend a departure from our current practice of focusing on a licensee's overall EEO efforts but, instead, sought only to freeze the processing criteria in effect as of September 1,

²⁰ See 47 U.S.C. §554(d)(3)(A).

²¹ See 47 U.S.C. §554(h)(1).

²² See Notice of Proposed Rule Making, in MM Docket No. 92-261, 8 FCC Rcd 266 (1993).

²³ See Appendix C for a list of commenters.

²⁴ See Notice, at 267-268.

²⁵ See NAB Comments, at 1-3.

²⁶ See NAACP Comments, at 26; UCC Comments, at 23-24.

²⁷ See 47 U.S.C. §334(b).

1992.²⁸ It also states that a statistical analysis, by itself, would not provide sufficient information to carry out the Act's second mandate; that is, to notify licensees of necessary improvements in recruitment practices as a consequence of the review.²⁹ NAB notes that the arguments made by NAACP and UCC ignore the language of the Conference Report which evidences Congress' intent that the mid-term review consist of a statistical comparison.³⁰

9. We will adopt our original proposal. The Act refers to a broadcast television station's employment practices. Congress did not define this term within the statute. There are a variety of potential approaches to evaluating a licensee's employment practices. The legislative history suggests that the mid-term evaluation of a licensee's employment practices should be based on an analysis of workforce data. It states³¹ that:

It is the intent of the conferees that the Commission's Mass Media Bureau staff compare the workforce data submitted in the first two Forms 395 to be filed following the grant of a license renewal with the station's area labor force, utilizing as the geographic area for comparison that which the Commission staff would customarily use for such purposes (MSA or county), and applying the FCC EEO processing guidelines in effect on September 1, 1992.³²

This language does not merely "freeze the processing guidelines" but instead articulates, in great detail, a specific standard which Congress intended to be used when conducting mid-term

²⁸ See UCC Comments, at 24; Reply Comments, at 10.

²⁹ See Id.

³⁰ See NAB Reply Comments, at 2.

³¹ Conference Report, at H 8333-8334.

³² The referenced criteria consist of a comparison of the composition of the stations' employment profile with the relevant labor force areas as follows. First, stations with five to 10 full-time employees would meet the guidelines if the proportion of minority and female representation in their overall staffs is at least 50% of that of the relevant labor force, and in the upper-level job categories at least 25% of that of the relevant labor force. Second, stations with 11 or more full-time employees would meet the guidelines if the proportion of minority and female representation is at least 50% of that of the relevant labor force, and in the upper-level job categories at least 50% of that of the relevant labor force.

reviews. Accordingly, we will adopt our original proposal and amend our rules according to the standard discussed in the Conference Report as the basis for examining employment practices.³³

10. Timing of the Review. The new Section 334(b) is silent as to specifically when the mid-term review is to occur. However, the legislative history states that the Commission should use the first two Forms 395-B that are filed after the station's license has been renewed.³⁴ In the Notice, the Commission proposed to use the first two Forms 395-B filed after the group expiration date of the station's license period as stated in Section 73.1020³⁵ of our rules.³⁶ NAB supports this proposal to the extent that it conforms with Congress' intent that the mid-term review occur during the normal five year license term. It urges us to review this proposal to ensure that it meets this intent.³⁷ We believe that our proposal does conform with Congressional intent and, we will, therefore, amend our rules accordingly.³⁸

11. Notification to Licensees. The Act requires the Commission to notify licensees of necessary improvements in recruitment practices identified as a result of the mid-term review.³⁹ The legislative history states that, if the Commission's review indicates that improvement in the station's recruitment practices appears necessary, a staff letter shall be sent to the station

³³ In this regard, we note that we customarily use the available labor force area in which the station is located. Accordingly, we will use alternative labor force data only when such data has been explicitly accepted by the Commission when it grants the last most recent license renewal. No initial requests for alternative labor force data will be accepted for use as part of the mid-term review analysis.

³⁴ See Conference Report, at H 8334.

³⁵ 47 C.F.R. §73.1020.

³⁶ See Notice, at 268.

³⁷ See NAB Comments, at 3.

³⁸ The fact that a station's renewal may be deferred pending resolution of related matters (*i.e.*, petitions to deny or informal objections), will have no effect on the timing of the mid-term review. The focus of the mid-term review will be on the station's workforce during the next license term while the renewal review will focus on EEO conduct during the previous license term.

³⁹ See 47 U.S.C. §334(b).

licensee so indicating.⁴⁰ In the Notice, the Commission proposed to notify licensees not meeting the processing guidelines that their overall recruitment efforts might need greater attention and should be the focus of more intense self-assessment.⁴¹ The Commission also proposed to send letters only to those licensees with identified deficiencies.⁴² NAB states that the deficiency letter might include the statistical comparison conducted by the Commission and that we might assist licensees in their EEO self-assessment by referencing the provisions of the Form 396 and the broadcast EEO Rule as items that the licensee should review.⁴³ NAB also suggests that it would not be inappropriate for the Commission to send "non-deficiency" letters to licensees who comply with the statistical comparison.⁴⁴ These letters could note that the receipt of such letter would not be evidence of compliance with the EEO Rule at renewal time.

12. Although we agree that mid-term review letters should include some guidance as to areas of EEO deficiency, we find the information suggested by NAB is unnecessary. Broadcast television station licensees, like all broadcast licensees, are required to engage in continuous self-assessment of their EEO programs. As part of this self-assessment, broadcast television stations should be engaging in the type of analysis which will be conducted at mid-term.⁴⁵ Moreover, broadcast television station licensees should be aware of the requirements of our broadcast EEO Rule as well as the type of information requested on the Form 396. Accordingly, we find that the inclusion of the information which NAB suggests is unnecessary.⁴⁶ However, in light of the purpose of the mid-term review -- to serve as an early warning as to possible EEO program deficiencies -- our letters will provide each recipient with guidance as to areas of EEO deficiency.

⁴⁰ See Conference Report, at H 8334.

⁴¹ See Notice, at 268.

⁴² See Id.

⁴³ See NAB Comments, at 4.

⁴⁴ See Id.

⁴⁵ See e.g., 47 C.F.R. §73.2080(c)(3).

⁴⁶ UCC argues that the letters could indicate exactly what steps the licensee should take to improve its recruitment practices. See UCC Reply Comments, at 10-11. This suggestion was made in the context of UCC's argument that we should conduct an overall EEO analysis at mid-term. In light of our decision regarding this issue, UCC's argument regarding the contents of the letter need not be discussed here.

13. We see no need to send "non-deficiency" letters to those licensees who comply with the processing criteria at mid-term. "Non-deficiency" letters are not required by the Act nor are they suggested in the legislative history. Moreover, as noted above, broadcast television station licensees, who engage in adequate self-assessment, are conducting the statistical comparison to be used for the mid-term review and, therefore, are already aware of how their employment profiles compare against the processing guidelines. In addition, as further discussed below, the mid-term review will serve only as an early warning to licensees. Accordingly, we will adopt the proposal to send mid-term review letters only to those licensees whose employment profiles fall below the processing guidelines.⁴⁷

14. Effect of Mid-term Review on Subsequent License Renewal. In the Notice, the Commission noted that the 1992 Cable Act is silent as to the effect of mid-term reviews on subsequent renewals. Based on the legislative history, however, the Commission tentatively concluded that the mid-term review should serve only as an early warning that the licensee's overall EEO efforts may need improvement.⁴⁸ Accordingly, the EEO program of a licensee that does not receive a deficiency letter would not be treated as being in compliance with the EEO Rule at renewal time merely because the Commission did not issue a mid-term deficiency letter.⁴⁹

15. In their comments, NAACP and UCC disagree with our conclusion. NAACP suggests that the mid-term review should be a factor when reviewing subsequently filed applications. It suggests that we "give teeth to midterm EEO reviews" by overruling our decision in Petition to Prevent Continuing Violations of the Commission's Equal Employment Opportunity Rule, 56 R.R.2d 445 (1984) ("Equal Employment Opportunity Violations") and holding that a renewal will be called in early in cases where

⁴⁷ Licensees who do not receive a mid-term review letter may assume that their employment profiles comply with the processing criteria. But see para. 14, infra.

⁴⁸ See Notice, at 268.

⁴⁹ See Id.

serious misconduct is found as a result of the mid-term review.⁵⁰ Similarly, UCC argues that a failure at mid-term coupled with a lack of improvement at renewal time should raise a "presumption of intent not to comply" and have a direct effect on the type of sanctions and amount of forfeiture issued.⁵¹ NAB argues that the suggestions made by NAACP and UCC ignore Congress' intent, as reflected in the legislative history, that mid-term reviews would not be treated as a sanction.⁵²

16. We will adopt our conclusion that mid-term reviews should constitute only an early warning that a licensee's EEO efforts may need improvement. The Conference Report explicitly reveals Congress' intent that, "[t]his letter is not and is not to be treated for any purpose as a Commission sanction of a station's EEO practices."⁵³ NAACP's proposal, therefore, ignores explicit Congressional intent. Accordingly, we will adopt our proposal that the mid-term review will constitute only an early warning that a licensee's EEO efforts may need improvement. A station's compliance at mid-term will not be evidence of compliance at renewal. Further, the mid-term deficiency letter will not be treated as a sanction against the licensee. However, at renewal time, we will take cognizance of all pertinent license term EEO data, including data relied upon for the mid-term review.

B. Cable Industry Equal Employment Opportunity.

17. Congress' intent in amending the cable EEO provisions was to increase attention to the representation of minorities and women in top managerial positions within the cable industry.⁵⁴ Congress believed that an increase in female and minority

⁵⁰ See NAACP Comments, at 26-27. We generally require "compelling reasons" and a substantial and material question of fact warranting designation for hearing before we will order a station to file its renewal application early. See e.g., Applications of WWOR-TV, Inc., For Transfer of Control of WWOR-TV, Inc., Licensee of Station WWOR-TV, Channel 9, Secaucus, New Jersey, 6 FCC Rcd 6569, 6574 (1991); Greater Portland Broadcast Corp., 3 FCC Rcd 1953, 1954 (1988); Sioux Empire Broadcasting Co., 9 FCC 2d 683, 684 (1967). Failure to meet the processing criteria at mid-term, by itself, would be insufficient evidence to warrant a call for the early filing of a renewal application. Therefore, NAACP's request is inappropriate.

⁵¹ See UCC Comments, at 24-25.

⁵² See NAB Reply Comments, at 2-3.

⁵³ See Conference Report, at H 8334.

⁵⁴ See Section 22(a) of the 1992 Cable Act.

representation in managerial positions advances the federal policy favoring program diversity.⁵⁵ Section 634, as amended, requires the Commission to collect more specific employment data from cable entities, including separate information on the job titles of employees listed within the various job categories.⁵⁶ In addition, the Act expands the current nine cable job categories to 15 and expands the scope of the cable EEO provisions to include multichannel video programming distributors.⁵⁷

18. In the Notice, the Commission proposed a number of revisions to its rules and the Cable Annual Employment Report (FCC Form 395-A) in order to implement the cable EEO provisions of the 1992 Cable Act. Specifically, it proposed to collect employee data for full and part-time employees, separately and by job title.⁵⁸ In addition, it proposed to collect workforce, hiring, promotion and recruitment data for the six new job categories.⁵⁹ It sought comment on proposed definitions for the six new job categories and proposed to adopt the current definitions for the remaining nine job categories.⁶⁰ The Commission sought comment on whether it should provide specific labor force statistical data for each of the six new job categories and whether the 1992 Cable Act required it to conduct a competency-based analysis.⁶¹ Finally, the Commission proposed to amend its rules to extend their scope to include multichannel video programming distributors.⁶²

19. With respect to general comments in this rule making proceeding, Congresswoman Cardiss Collins expresses her concern that the Commission enforce the EEO provisions to the full extent authorized by Congress.⁶³ Many commenters from the cable industry express concern regarding the significant increase in preparation time and paperwork the new rules, as proposed in the

⁵⁵ See Id.

⁵⁶ See 47 U.S.C. §554(d)(3)(A).

⁵⁷ See 47 U.S.C. §§554(d)(3)(A) and (h)(1).

⁵⁸ See Notice, 8 FCC Rcd at 268.

⁵⁹ See Id., at 269.

⁶⁰ See Id.

⁶¹ See Id.

⁶² See Id.

⁶³ See Letter from Congresswoman Cardiss Collins, dated April 15, 1993, to Chairman James H. Quello.

Notice, would generate. In a joint pleading, various cable companies (the "Companies") state that, having made a commitment of corporate resources to recruitment, training and development of fair and innovative personnel practices, they object "to the diversion of corporate resources from these important activities to the production of burdensome and needless paperwork."⁶⁴ Other commenters suggest that, in developing the new rules, we eliminate "redundant" reporting requirements.⁶⁵ One commenter requests that, when fashioning new EEO reporting requirements, we bear in mind the disproportionate effect of any administrative increases on small cable operators.⁶⁶ Other comments express a belief that we should use existing procedures as much as possible in implementing the EEO provisions.⁶⁷

20. Some commenters believe that the Commission's proposals did not go far enough. UCC argues that the Act requires "sweeping changes" to our EEO enforcement program. It states that, contrary to our interpretation of the legislative history, Congress found that our EEO efforts-based policy is ineffective and that instead, it intended a "rigorous" approach to EEO enforcement.⁶⁸ Noting the few number of minorities promoted and hired in top jobs in the cable industry, UCC, as well as NAACP, proposes a number of significant changes to every aspect of our

⁶⁴ Companies Comments, at 2.

⁶⁵ See e.g., Companies Comments, at 6-7; Consortium of Small Cable Television Companies (the "Consortium") Comments, at 3-4; Tele-Communications, Inc. ("TCI") Reply Comments, at 1-2.

⁶⁶ See Consortium Comments, at 2. Alternatively, the Consortium suggests that we streamline the reporting procedures for small cable systems which could be defined as "an independently-owned system which has either: (a) no more than 10,000 subscribers; or (b) annual gross revenues of \$7.5 million or less." Consortium Comments, at 4. We are revising our reporting form to require less data than that proposed in the Notice. Moreover, our rules already take cognizance of small cable systems. Those employment units with fewer than six full-time employees are subject to a "one-time only" filing requirement. In light of this, we see no reason to further "streamline" the reporting requirements for small cable operators as the Consortium suggests.

⁶⁷ See Time Warner Comments, at 14; Reply Comments, at 13.

⁶⁸ See UCC Comments, at 2-5.

cable EEO enforcement program.⁶⁹ Time Warner Cable ("Time Warner") replies that Congress did not intend a drastic overhaul of our EEO enforcement policy and notes that the only significant changes made by the 1992 Cable Act were the addition of six new job categories and the raising of the basic forfeiture amount. It argues that Congress "perceived" an underrepresentation of women and minorities in policy-making positions and imposed additional reporting requirements to improve the Commission's ability to evaluate them.⁷⁰

21. Nothing in the Cable Act indicates that Congress required the "sweeping" changes that UCC and NAACP suggest. The Act's language requires us to adopt revisions to our rules "to implement the amendments made to this section by the Act."⁷¹ The Act amends Section 634 to: 1) require collection of employee data by job title; 2) add six new upper-level job categories; 3) raise the basic forfeiture amount to \$500; and 4) extend the scope of the cable EEO provisions to "any multichannel video programming distributor." The rules adopted herein fully implement the provisions of the 1992 Cable Act. No other changes to our cable EEO rules are required.⁷²

1. Collection of Employee Data.

22. The Act mandates a number of additional reporting requirements for cable operators. In the Notice, the Commission proposed several revisions to its Form 395-A. Many commenters note that the revised form, as proposed in the Notice, would generate a significant increase in time and volume of

⁶⁹ See Id., at 2-13; see generally, NAACP Comments. For example, UCC suggests that we collect more detailed documentation as part of our annual and five year review of cable operators' EEO programs. NAACP suggests revisions to the CARS renewal process apparently to facilitate the filing of petitions to deny by citizens groups. As explained below, these changes are not required by the 1992 Cable Act.

⁷⁰ See Time Warner Reply Comments, at 5-6.

⁷¹ 47 U.S.C. §554(d)(1).

⁷² NYSC states that the Notice was unclear as to how the "proposed" on-site reviews will be conducted and EEO compliance recommendations implemented. We did not propose to conduct on-site reviews as NYSC suggests. On-site reviews were implemented pursuant to the 1984 Cable Act. Our current procedures for conducting on-site reviews and determining EEO compliance will not change. For a further discussion regarding our cable EEO rules and enforcement procedures, see Report and Order, in MM Docket No. 85-61, 102 FCC 2d 562 (1985).

paperwork.⁷³ In view of the comments, we have revised the proposed Form 395-A.⁷⁴ Specifically, we will continue to collect full and part-time employee data in the aggregate on one grid. To collect the required job title information, we will allow cable entities to submit computer-generated employee lists as suggested by one commenter. We will also require cable operators to maintain recruitment information for all 15 job categories. However, we will not collect this information annually as proposed in the Notice. Rather, cable operators will be expected to submit this information upon Commission request. We believe our revisions comply with the requirements of the Act and will provide adequate information for our cable EEO review, with a minimum burden on all parties involved.

23. Collection of Full and Part-time Employee Data. The Act requires collection of employee statistical data for full and part-time employees.⁷⁵ In the Notice, the Commission proposed to collect employee data for full and part-time employees on two separate grids.⁷⁶ Upon review of the comments regarding the significant increase in paperwork the proposed Form 395-A would generate, we will continue to collect workforce data on full and

⁷³ For example, the Companies note that our proposal would increase the number of pages for each 395-A report from the current four pages to over 20 pages. See Companies Comments, at 4. TCI states that our proposal would generate at least 4,000 additional pages of employment data for its 400 employment units. See TCI Comments, at 2.

⁷⁴ See Appendix D.

⁷⁵ See 47 U.S.C. §554(d)(3)(A).

⁷⁶ See Notice, at 268. Cole, Raywid and Braverman ("CRB"), on behalf of its clients, and TCI urge us to continue to apply our processing guidelines to the employment unit as a whole. See CRB Comments, at 5-7; TCI Comments, at 8-10. CRB also suggests that we modify our current definition of "full-time employee" to allow cable operators more flexibility in classifying, as full-time, those employees who do not work fixed schedules of 30 hours or more, but who are otherwise considered by employers as full-time employees. See CRB Comments, at 5. In light of our decision to continue to collect data on full and part-time employees in the aggregate, we will continue to apply the processing guidelines to the employment unit as a whole. However, we see no reason to modify our current definition of "full-time employee" as CRB suggests. This definition also is used for determining the status of employees within the broadcast industry. See Instructions For Completion of FCC Form 395-B Broadcast Station Annual Employment Report, Section 8. For purposes of uniformity, we believe it is appropriate to use the same definition for both industries.

part-time employees in the aggregate on one grid. However, the full and part-time status of each employee will be recorded on a list of employees reported by job title. Thus, the grid portion of the form will remain the same, as will our application of the processing criteria.

24. Job Title Information. The amended Section 634(d)(3)(A) requires the collection of job title information.⁷⁷ In the Notice, the Commission proposed to collect this data in a separate section which required cable entities to list job titles of employees within each of the 15 job categories.⁷⁸ TCI suggests that we allow cable operators to present their job title data as compiled on internal record-keeping systems (i.e., computer generated payroll lists).⁷⁹ UCC suggests that we revise the instructions for this section to clarify that job title information must be provided for each of the 15 job categories.⁸⁰

25. In recognition of the significant increase in reporting which our proposed form would require, we agree with TCI and will accept computer-generated employee lists that show the job title, job category, full or part-time status of the position, the gender, and the race or national origin of the person holding the position. Job titles may be listed in any order within each job category to the extent possible.⁸¹ Cable operators choosing not to use this format are expected to provide complete data in an organized, decipherable fashion.

26. Collection of Recruitment Information. Section 634(d)(3)(B), as amended by the Act, requires the collection of information on "hiring, promotion and recruitment practices necessary for the Commission to evaluate the efforts of entities to comply with the provisions of paragraph (2) of this

⁷⁷ See 47 U.S.C. §554(d)(3)(A).

⁷⁸ See Notice, at 268, 297.

⁷⁹ See TCI Comments, at 11.

⁸⁰ See UCC Comments, at 16.

⁸¹ We also will eliminate the request for a breakdown of employees in certain positions by gender and race or national origin on Part 1 of the SIS form as requested by several commenters. See e.g., Companies Comments, at 6-7; Consortium Comments, at 3-4; TCI Reply Comments, at 1-2. This information is essentially the same as that information now requested annually. However, we will continue to require the submission of job descriptions in response to the SIS form.

subsection."⁸² The legislative history states that "[t]he report is required to include information on hiring, promotion, and recruitment practices that the FCC will need to evaluate the compliance of entities with this section."⁸³ Thus, the language in the Act and the legislative history suggest that Congress allowed the Commission some discretion in determining what hiring, promotion and recruitment information is necessary to evaluate EEO performance.

27. In the Notice, the Commission proposed to collect specific recruitment information for the six new job categories in the form of a narrative.⁸⁴ However, some commenters argue that the narrative is unnecessary in that the hiring results, as well as the responses to questions in Section III of the Form 395-A (See Appendix D), provide sufficient information to determine EEO compliance.⁸⁵ Comcast Corporation, Jones Intercable, Inc., and Newhouse Broadcasting Corporation ("Joint Parties") suggest that we collect this information randomly.⁸⁶ CRB and TCI suggest that we collect the data on a grid instead of a narrative.⁸⁷

28. Upon review of the comments, we have determined that cable systems should be required to provide recruitment information for all job categories, including the six new job categories, upon Commission request. The annual submission of workforce, hiring and promotion data, particularly for the six new job categories, as well as responses to the questions in Section III of the Form 395-A,⁸⁸ will provide sufficient information for the Commission staff to determine EEO compliance. However, as is our current practice, if our review raises any questions or suggests EEO non-compliance with regard to any aspect of the EEO program,

⁸² 47 U.S.C. §554(d)(3)(B). Paragraph (2) of Section 634(d) specifies the various EEO program requirements with which cable operators must comply. See 47 U.S.C. §554(d)(2).

⁸³ House Report, at 113.

⁸⁴ See Notice, 8 FCC Rcd at 269, 295-296. UCC supports this proposal. See UCC Reply Comments, at 12-13.

⁸⁵ See Companies Comments, at 7; Time Warner Comments, at 7-9.

⁸⁶ See Joint Parties Reply Comments, at 4-5.

⁸⁷ See CRB Comments, at 7-8; TCI Comments, at 11-12. CRB also suggests a revision in the instructions to account for operators who refuse to provide the requested data. See CRB Comments, at 8.

⁸⁸ See Appendix D.

including the six new job categories, additional inquiries and/or an on-site review will be conducted.⁸⁹ In this regard, we remind cable operators that they are expected to maintain sufficient documentation of their efforts to recruit qualified females and minorities for all vacancies, including those positions falling within the six new job categories. Failure to provide sufficient documentation regarding such recruitment efforts as well as other aspects of an EEO program could result in denial of certification and other sanctions.

2. Definitions for Job Categories.

29. The amended Section 634(d)(3)(B) requires the Commission to define the six new job categories "so as to ensure that only employees who are principal decisionmakers and who have supervisory authority are reported for such categories."⁹⁰ The legislative history provides no further guidance in defining the six new job categories. Section 634(d)(3)(B) also requires the Commission to adopt rules that define the remaining nine job categories "in a manner that is consistent with the Commission policies in effect on June 1, 1990."⁹¹ However, with respect to the nine other categories, the legislative history indicates that we should follow Congress' directive in 1984 "[to ensure] that the definitions accurately reflect the nature of the categories and the specific positions within them."⁹² The legislative history further indicates that Congress allowed the Commission some authority to reexamine all of its existing job categories.⁹³

30. In the Notice, the Commission proposed definitions for the six new job categories and proposed to adopt its current

⁸⁹ In its comments, UCC argues that the Form 395-A is unreliable in determining EEO compliance. See UCC Comments, at 7-10. Our review does not end with the cable operator's responses to the nine questions. Indeed, our initial cable EEO review includes a review of the workforce, hiring and promotion data submitted on the Form 395-A. Our experience has been that our review of the entire Form 395-A is sufficiently reliable in determining which cable systems have questionable EEO programs.

⁹⁰ 47 U.S.C. §554(d)(3)(B).

⁹¹ Id.

⁹² House Report, at 113 (citing Report and Order, in MM Docket No. 85-61, 102 FCC 2d 1575 (1985) (citing the 1984 House Report, at 91.))

⁹³ See Id.

definitions for the remaining nine job categories.⁹⁴ Some commenters generally support our proposed definitions.⁹⁵ However, several commenters raise significant concerns regarding the proposed definitions for three of the six new job categories. In addition, some commenters suggest revisions for seven of the nine original job categories.

31. Upon review of the comments in this proceeding, we have revised or attempted to clarify definitions for 11 of the 15 job categories.⁹⁶ We will adopt the definitions for "Comptroller," "Professionals,"⁹⁷ "Laborers," and "Service Workers" as proposed in the Notice. In addition, we will revise the definition for the "General Manager" category to include the title "Systems Manager" as a position possibly falling within this category. We also will revise the "Production Manager," "Managers," "Technicians," "Sales,"⁹⁸ "Office and Clerical," "Craftswomen" and "Operatives" categories as some comments suggest. For example, we will adopt CRB's suggestion that we specify that an incumbent within the "Production Manager" category should be a senior employee responsible for advertising and/or production of local community programming.⁹⁹ In addition, we will adopt its request that we add language, in the "Managers" category, which acknowledges that managers may be found in "segments" of a company's operations or within "subdepartments" of a major department.¹⁰⁰ We also will adopt NYSC's suggestion that our

⁹⁴ See Notice, 8 FCC Rcd at 269, 301-305.

⁹⁵ See e.g., Continental Cablevision ("Continental") Comments, at 2; Time Warner Comments, at 3; UCC Comments, at 14; CTHRA Reply Comments, at 2; Joint Parties Reply Comments, at 2.

⁹⁶ See Appendix B.

⁹⁷ The New York State Commission on Cable Television ("NYSC") argues that our current definition for "professionals" is too broad and that we should distinguish between "licensed" and "unlicensed" professionals. See NYSC Comments, at 2. We see no reason to revise our current definition as NYSC suggests. Neither the Cable Act of 1984 nor the 1992 Cable Act makes such a distinction.

⁹⁸ Although not suggested in the comments, we will revise the definition for this category to clarify that it includes employees who ordinarily are paid by commission. We believe this clarification will ensure more accurate reporting of employees who appropriately fall within this category.

⁹⁹ See CRB Comments, at 4.

¹⁰⁰ See Id.

definition for this category focus on the hiring and firing authority generally held by managers.¹⁰¹ Moreover, we will adopt Time Warner's suggestion that we clarify that employees falling within the six new job categories fall within the "Managers" category.¹⁰² However, we will not adopt TCI's suggestion that we remove the title "program directors" from the "Managers" category and place it only in the "Professionals" category.¹⁰³ Some companies may appropriately classify "program directors" within the "Managers" category.

32. We also will adopt CRB's suggestions that we include additional titles within the "Technicians" category and language in the "Sales" category which refers to employees who engage in direct customer contact for purposes of product and service promotion. In addition, we will adopt CRB's request that we list "splicers" in the "Craftworkers" category instead of the "Operatives" category.¹⁰⁴ Finally, we will adopt the suggestion from CRB and TCI that we list "customer service representatives" in the "Office and Clerical" category.¹⁰⁵ However, we will, as the Joint Parties request,¹⁰⁶ clarify that proper classification depends on the level of the employee's responsibilities regardless of the specific title. We will revise our rules to include these changes.¹⁰⁷

33. Many commenters raise concerns regarding our proposed definitions for the "Corporate Officers", "Chief Technician," and "General Sales Manager" categories. In the Notice, we proposed to define "corporate officers" as an "[e]mployee with official

¹⁰¹ See NYSC Comments, at 2.

¹⁰² See Time Warner Comments, at 2.

¹⁰³ See TCI Comments, at 8.

¹⁰⁴ See CRB Comments, at 4.

¹⁰⁵ See CRB Comments, at 5; TCI Comments, at 8.

¹⁰⁶ See Joint Parties Reply Comments, at 4.

¹⁰⁷ UCC suggests that we include detailed examples of job descriptions that are appropriate and inappropriate for each job category. It states that cable operators should be told that an "office manager" with clerical responsibilities or a "Building Supervisor" with janitorial duties should not be classified as a "Manager." See UCC Comments, at 15-16. We do not believe that "examples" of job descriptions are necessary. The instructions to the Form 395-A inform cable operators that, in classifying employees, they should rely on the responsibilities of the position and not the job title. Our rules will include this language also.

authorization to represent the company in a fiduciary capacity."¹⁰⁸ Most of the commenters object to the proposed definition and use of the term "fiduciary" as overly broad and imprecise.¹⁰⁹ In addition, several commenters express concern about the counting of employees who fall into this and other categories (i.e., Vice President and General Manager).¹¹⁰ Many of the commenters submit alternative definitions. For example, the Companies and UCC suggest definitions whereby only positions specified by the company's governing regulations (i.e., Articles of Incorporation, Articles of Partnership, By-Laws) would be included within this category.¹¹¹ Time Warner suggests that the definition should be based on the definition of "officer" under federal securities law.¹¹² Both the National Cable Television Association ("NCTA") and Continental suggest that the definition should be a senior executive as defined by the company. Their proposals contain a list of examples of titles falling within the category. In addition, the proposals include language clarifying that corporate officers are generally located at corporate headquarters and that the title "Vice President and General Manager" would normally be classified only as a "General

¹⁰⁸ Notice, at 304.

¹⁰⁹ See e.g., Companies Comments, at 5-6; CRB Comments, at 2; Continental Comments, at 3; NCTA Comments, at 5; NCTA Reply Comments, at 2-3; NYSC Comments, at 2; TCI Comments, at 7; Time Warner Comments, at 3-4; Time Warner Reply Comments, at 2-3; UCC Comments, at 14-15; CTHRA Reply Comments, at 2-3; Joint Parties Reply Comments, at 2-3.

¹¹⁰ See e.g., Companies Comments, at 5-6; TCI Comments, at 7; CTHRA Reply Comments, at 4.

¹¹¹ See Companies Comments, at 5-6; UCC Comments, at 14-15. The Companies would define this category as, "any employee who is an Official and Manager and who also holds a corporate office (e.g., President, Vice President) as designated in the Articles of Incorporation, Articles of Partnership or By-Laws of the company by which he or she is employed." See Companies Comments, at 6. UCC would define this category as including, "[a] person selected, in accordance with the company's governing regulations (e.g. Bylaws), to act primarily for the company's benefit in a defined capacity." UCC Comments, at 15.

¹¹² See Time Warner Comments, at 3-4; Reply Comments, at 2-3. Thus, Time Warner would define this category as "a president, vice president, secretary, treasurer, or principal financial officer, comptroller or principal accounting officer, and any person routinely performing corresponding functions with respect to any organization whether incorporated or unincorporated." Time Warner Comments, at 4.

Manager."¹¹³ CRB and TCI suggest that we include language clarifying that this category is reserved only for titles which have not been otherwise classified.¹¹⁴

34. We will revise our definition to substantially conform to those proposed by the Companies and UCC. The "corporate officers" category will include only those employees who are responsible for setting policies for the overall operation of the company¹¹⁵ and who hold corporate offices as designated by the company's governing regulations. We believe this revised definition most appropriately conforms with the requirements of the Act. In addition, the revised definition establishes an objective standard by which we can determine whether employees are appropriately listed within this category.

35. Some commenters note that the title "Chief Technician" is outdated in the cable industry and has been replaced with titles such as "Chief Engineer," "Technical Operations Manager," "Technical Manager," or "Plant Manager."¹¹⁶ In addition, the commenters indicate that employees within this category also may be responsible for fleet supervision and maintenance, inventory control, tower leasing, profit and loss goals and budgeting and approving capital expenditures.¹¹⁷ They also state that a person in this category could oversee technical personnel in the installation, service, maintenance, and construction departments.¹¹⁸ However, CRB notes that a "Chief Technician" may not necessarily be responsible for all technical personnel at a

¹¹³ See NCTA Comments, at 6; Continental Comments, at 3. NCTA's proposal is supported by the Cable Television Human Resources Association ("CTHRA") and the Joint Parties because it defines the incumbent as a "senior" executive and eliminates the term "fiduciary." See CTHRA Reply Comments, at 3; Joint Parties Reply Comments, at 2-3.

¹¹⁴ See CRB Comments, at 2; TCI Comments, at 7, Appendix A. We will adopt this suggestion in response to concerns regarding the counting of employees who fall within the "corporate officers" and another of the six new job categories (e.g. Vice President and Comptroller).

¹¹⁵ See Definition of "Managers" in Appendix B.

¹¹⁶ See e.g., CRB Comments, at 2-3; TCI Comments, at 8; CTHRA Reply Comments, at 3; Joint Parties Reply Comments, at 3.

¹¹⁷ See e.g., CRB Comments, at 2-3; TCI Comments, at 8; Joint Parties Reply Comments, at 3..

¹¹⁸ See Id.

system.¹¹⁹ We will revise our definition to conform with the duties described by these comments in order to reflect the current cable workforce.¹²⁰

36. The comments indicate that the definition for the "General Sales Manager" category, as proposed in the Notice,¹²¹ is overly broad. Continental states that Telemarketing Managers, Sales Supervisors and Sales Managers would inappropriately fall within our proposed definition. As an alternative, it proposes a definition which would explicitly exclude advertising sales and telemarketing.¹²² CRB proposes a definition, also supported by CTHRA, which would include senior-level individuals responsible for the marketing function of the system.¹²³ We will revise our definition as proposed by CRB. We believe that CRB's proposed definition most accurately reflects the general function of the "General Sales Manager" position within the cable industry.

3. Analysis of Employee Data.

37. The amended Section 634(d)(3)(B) states that the Commission shall prescribe the method by which cable entities compute and report the number of minorities and women in the job categories "in proportion to the total number of qualified minorities and women in the relevant labor market."¹²⁴ As noted in the Notice, the Commission believed that this language could be read as requiring it to provide labor force statistics for each of the new job categories as it currently does for the original nine job

¹¹⁹ See CRB Comments, at 3.

¹²⁰ See Appendix B. Continental would define this category as, "an employee who has overall technical responsibility at an operational unit or system level for the transmission of a clear and consistent quality picture to cable television subscribers." Continental Comments, at 4. We believe our revised definition is more appropriate since it takes cognizance of the additional duties of an employee within this category.

¹²¹ See Notice, 8 FCC Rcd at 302.

¹²² See Continental Comments, at 4.

¹²³ See CRB Comments, at 3. CRB and CTHRA note that our proposal would invite overlap with positions such as "Vice President of Marketing" and "Vice President and General Sales Manager." CRB states that we should clarify that these dual positions should be reported in only one category. See CRB Comments, at 3; CTHRA Reply Comments, at 3-4. We have addressed this concern in our revised rules. See Appendix B.

¹²⁴ 47 U.S.C. §554(d)(3)(B).

categories. The legislative history, however, suggests that we should include the six new job categories within our evaluation of the upper-level positions following our current process.¹²⁵ Accordingly, the Commission tentatively concluded that the Act did not require it to provide statistical data for the six new job categories.¹²⁶ The Companies support our conclusion that statistical data for the six new job categories is unnecessary.¹²⁷ Time Warner, however, argues that we should provide statistical data for each of the new categories, to the maximum extent possible, for purposes of more meaningful self-assessment.¹²⁸ It states that this data could be provided based on equivalent job classifications for which the Census Bureau maintains information.¹²⁹

38. Based upon the record in this proceeding, we will adopt our proposal to continue to provide statistical data only for each of the original nine job categories and in the aggregate. The labor force data available to the Commission includes only the nine original job categories. Moreover, in analyzing the EEO compliance of cable systems, we will include the unit's workforce statistics for the six new job categories in our review of the unit's upper-level positions. Specifically, for purposes of our analysis of a system's overall and upper-level employment profiles, the six new categories will be treated as titles within the "Managers" category. The "Managers" category is one of the four "upper-level" categories. In addition, use of a more finite comparison of a few individuals within a category with the availability of persons with similar jobs in the labor force, might cause the Commission to undertake a competency-based analysis, which was not Congress' intent.

39. The reference to "qualified minorities and females" in the Act and the legislative history also raises the issue as to whether the Commission is required to engage in a competency-based analysis. The legislative history also states, however, that "[t]he method for comparing the composition of the cable operator's workforce with that of the relevant labor market has not been changed...."¹³⁰ The few parties that commented on the competency-based analysis issue agree with our conclusion that

¹²⁵ See House Report, at 112.

¹²⁶ See Notice, at 269.

¹²⁷ See Companies Comments, at 5.

¹²⁸ See Time Warner Comments, at 10.

¹²⁹ See Id, at 10-11.

¹³⁰ House Report, at 112.

Congress did not intend that the Commission engage in a competency-based analysis.¹³¹ Accordingly, based upon the record in this proceeding, we will not engage in a competency-based analysis when analyzing cable systems' employment profiles.

4. Multichannel Video Programming Distributors.

40. The amended Section 634(h)(1) expands the scope of the EEO provisions to include "any multichannel video programming distributor" (MVPD).¹³² The amended Section 602(12) defines an MVPD as "a person such as, but not limited to, a cable operator, a multichannel multipoint distribution service, a direct broadcast satellite service, or a television receive-only satellite program distributor, who makes available for purchase, by subscribers or customers, multiple channels of video programming."¹³³ The amendment reflects Congress' belief that "it is important to ensure women and minorities equal employment and promotion opportunities in new, emerging, and alternative technologies."¹³⁴ In the Notice, the Commission proposed to amend its rules to include MVPDs and to adopt the Act's definition for this term.¹³⁵ In addition, it proposed rules specifically imposing the cable EEO requirements on licensees and permittees of MMDS and DBS facilities. The Notice¹³⁶ raised the video dialtone issue in terms of how the rules should apply in situations where separate entities provide program delivery and program sales functions by cross reference to a parallel consideration of this issue in our broadcast signal carriage proceeding.¹³⁷

41. In response to the Notice, the Wireless Cable Association ("WCA") requests that, in adopting our final rules, we note that

¹³¹ See Continental Comments, at 5; Time Warner Comments, at 4-5; CTHRA Reply Comments, at 4.

¹³² See 47 U.S.C. §554(h)(1).

¹³³ 47 U.S.C. §522(12).

¹³⁴ House Report, at 113.

¹³⁵ See Notice, 8 FCC Rcd at 269. The Commission also referred to the more detailed discussion of this term in Notice of Proposed Rule Making, in MM Docket No. 92-259, 7 FCC Rcd 8055 (1992). ("Broadcast Signal Carriage NPRM").

¹³⁶ See Notice, 8 FCC Rcd at 270, ¶42.

¹³⁷ See Notice of Proposed Rule Making, MM Docket No. 92-259, 7 FCC Rcd 8055 (1992). ("Broadcast Signal Carriage NPRM").